IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 22ND MARCH 2007 / 1ST CHAITHRA 1929

MACA.No. 70 of 2004()

OPMV.1017/1994 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KOTTAYAM
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APPELLANT/3RD RESPONDENT

THE NEW INDIA ASSURANCE COMPANY LIMITED,
PALA NOW REPRESENTED BY ITS ASSISTANT
ADMINISTRATIVE OFFICER, REGIONAL OFFICE,
M.G.ROAD, KOCHI-11.

BY ADV. SRI.MATHEWS JACOB

RESPONDENTS: PETITIONER AND RESPONDENTS 1,2,6 & 7
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1. **JEWAL JEROME (MINOR), REPRESENTED BY HIS FATHER AND NEXT FRIEND P.J.JEROME, PARAKATTU HOUSE, AKALAKUNNAM, KOTTAYAM.**

2. **THE SECRETARY, MEENACHIL TALUK AUTORIKSHAW THOZHILALI CO-OPERATIVE SOCIETY, K-695, PALA.**

3. **ANILKUMAR, S/O. PARAMESWARAN NAIR, ILLATHEL HOUSE, AYARKUNNAM P.O., KOTTAYAM DISTRICT**

4. **THE ORIENTAL INSURANCE COMPANY LIMITED, KOTTAYAM.**

5. P.K.VIJAYAN, PALAMPURAYIDATHIL,
PALA P.O.
(NO RELIEFS ARE CLAIMED AGAINST THE RESPONDENTS 4 AND 5 IN THE ABOVE ORIGINAL PETITION AND HENCE THEY ARE NOT MADE PARTIES IN THIS APPEAL)

BY ADV. SRI.JAI GEORGE
SRI.RAJEEV V.KURUP
SRI.S.PRASANTH
SRI.GEORGE CHERIAN (THIRUVALLA)
SRI.THOMAS MATHEW NELLIMOOTTIL

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 22/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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M.A.C.A. NO. 70 OF 2004

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Dated this the 22nd day of March, 2007

J U D G M E N T

The third respondent insurer in O.P(MV) No.1017 of 1994 on the file of the Motor Accidents Claims Tribunal, Kottayam is the appellant. The appeal is filed challenging the award passed by the Tribunal by which the appellant alone was made liable for the entire amount of compensation.

2. The first respondent, petitioner in the O.P., was travelling in an Autorikshaw bearing Reg. No. KRO-6621 driven by the 5th respondent. A collision took place between the vehicle in which first respondent was travelling and another vehicle bearing Reg. No.KL-5/2176 and he sustained injuries. He filed the O.P. claiming compensation impleading the owners, drivers and insurers of both vehicles. The Tribunal found that the accident occurred due to the negligence of the drivers of both the vehicles. It was also found that both drivers are equally liable and shall pay the compensation at the ratio of 50:50. But while

passing the judgment, insurer of one vehicle alone was directed to pay the entire compensation. Hence this appeal.

3. I do not find any reason to interfere with the finding of fact regarding the negligent aspect and also the quantum of compensation awarded. But considering the fact that it is a collision involving both vehicles and both the vehicles are covered by valid policy of insurance, I am of the view that the Tribunal ought to have directed the insurer of both the vehicles to pay compensation. So the liability fastened on the appellant to pay the entire compensation is not sustainable.

In the result, the appeal is allowed in part. The liability to pay compensation is modified. The compensation awarded will be paid by the appellant and the 6th respondent, insurer of the other vehicle, in equal proportion.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.F.A. NO. OF

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J U D G M E N T

15TH MARCH, 2007